



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

**DATE:** June 28, 2013

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary *Ben Brancel*  
Steve Ingham, Administrator, Division of Food Safety *Steve Ingham*

**SUBJECT:** Regulation of Milk Haulers, and affecting small business; Emergency Rulemaking Scope Statement

**PRESENTED BY:** Steve Ingham, Division of Food Safety

**REQUESTED ACTION:**

At the July 16, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "scope statement" (copy attached) for an emergency rule for proposed changes to current DATCP rules related to milk hauling. Currently, ch. ATPC 82, Wis. Adm. Code, requires that bulk milk tanks be emptied each time milk is collected. This requirement is outdated and inconsistent with practices in other states that adopt the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO). Milk hauling companies report that this requirement creates an unnecessary burden, causing problems with meeting road weight-limit regulations and preventing them from managing their milk hauling practices most efficiently.

If the proposed scope statement for the emergency rule is approved, the department will promulgate an emergency rule adopting a provision of the PMO allowing milk haulers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. An emergency rule is a temporary rule change. The department is also requesting approval of a separate scope statement that would adopt these regulations, along with others related to milk hauling, as a permanent rule change to ATPC 82.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed emergency rule until the Governor approves a scope statement for that rule as required under s. 227.135(2), Stats. This scope statement was approved by the Governor on June 14, 2013. Wisconsin statutes also require the DATCP Board to approve a scope statement before the department can begin to draft an emergency rule. The department is required to publish an emergency rule scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached scope statement with the Legislative Reference Bureau for publication in the July 1, 2013 issue of the Wisconsin Administrative Register and filed a copy with DOA as required.

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If the Board approves the attached scope statement related to the emergency rule, the department will begin drafting the emergency rule. An emergency rule goes into effect after it has been approved by the Secretary and the Governor and as soon as it is published in the official state newspaper. An emergency rule remains in effect for 150 days. The department may request that the Joint Committee for Review of Administrative Rules (JCRAR) extend the length of time the emergency rule remains in effect for an additional 120 days.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATPC 82, Wis. Adm. Code (Existing)

Relating to: Partial collection of milk from bulk tanks on dairy farms and affecting small business.

### 1. Description of the objective of the rule:

The department proposes an emergency rule adopting a provision of the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO) allowing milk haulers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, Wisconsin Administrative Code requires that bulk milk tanks must be emptied each time milk is collected. The department also plans to propose permanent rule changes to ATPC 82 to incorporate this, along with other, rule changes.

### 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Wisconsin ranks second nationally in milk production and operates the nation's largest state dairy inspection program. Wisconsin has by far the largest number of dairy farms operated by licensed dairy producers; the milk from each of these farms is shipped to one of the 400+ licensed dairy plants in the state, or to a licensed dairy plant in another state. Milk must be collected from each farm in a licensed bulk milk tanker, and a licensed bulk milk weigher sampler must properly record the amount of milk collected and sample the milk on each farm for testing.

Current Wisconsin regulations in ch. ATPC 82 require that all milk present in a bulk tank must be collected when a collection is made, i.e. partial collection is forbidden. The intent of this regulation was to ensure that a dairy producer's bulk tank(s) was regularly cleaned and sanitized, and to ensure that collection-to-collection transfers of illegal drug residues did not occur, which could result in increased financial losses to dairy producers forced to dump multiple loads of milk.

The requirement prohibiting partial collection of milk from a bulk tank is outdated. Farm sanitation methods have improved since Wisconsin's rule was first adopted. More frequent testing allows dairy plants to catch issues regarding bulk tank cleanliness faster than in the past. At the same time, the number of dairy farms has decreased, farms have become larger and per cow milk production has risen and many farms have purchased larger bulk tanks, creating new challenges for managing milk collection. For example, some farms now have bulk milk tanks that hold 7,000 or more gallons of milk, while other farms may have several smaller tanks. The average milk truck carries approximately 6,000 gallons of milk. Allowing partial collection of milk from bulk tanks will give dairy plants the tools they need to better manage milk collection

from these farms and load trucks to full capacity. This rule will reduce the number of trips required to haul milk, thus saving fuel and reducing wear and tear on the roadway and potentially resulting in significant cost savings.

The PMO allows partial collection of milk provided that the bulk tank is emptied, cleaned and sanitized within at least 72 hours. The PMO also requires an acceptable temperature-recording device to be installed and operating on any bulk tank from which partial collections are made. The bulk milk weigher sampler, and regulatory personnel are required to observe temperature records to be sure that loss of temperature control, which can lead to unacceptable bacterial growth, did not occur following a partial collection. In absence of a temperature-recording device, partial pickups are permitted under the PMO as long as the bulk tank is emptied completely, cleaned and sanitized prior to the next milking. This proposed emergency rule adopts the PMO standards in order to allow partial collections, increase flexibility for managing milk pickups, and potentially save fuel costs and decrease roadway damage.

Policy Alternatives. If the department does not alter the current rules, Wisconsin dairy plants will continue to lack the same flexibility as dairy plants in other states that adopt the PMO standard and allow plants to collect partial loads of milk. They will be prevented from managing their milk hauling practices in the most cost efficient and profitable manner and will be required to continue to empty bulk tanks each time they make a pickup, even if that means trucks are not filled to capacity or they have to dump over-capacity milk. Not changing this policy has the potential to negatively impact dairy plant and producer costs, causing companies to incur unnecessary fuel and other costs associated with hauling milk, putting them at an economic disadvantage to dairy producers in other states that have adopted the PMO standard. These unnecessary trips also may damage Wisconsin roads.

**3. Statutory authority for the rule (including the statutory citation and language):** Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.21 (6), Stats.

**93.07 Department duties.** It shall be the duty of the department:

(1) **REGULATIONS.** To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

**97.09 Rules.**

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

## 97.21 Milk haulers and milk distributors.

(6) **RULE MAKING.** The department may promulgate rules to establish amounts of fees required under sub. (4) or to regulate bulk milk tanker operators and milk distributors. The rules may include standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

### 4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

### 5. Description of all entities that may be impacted by the rule:

Dairy producers will gain increased flexibility regarding volume of any bulk milk tanks they purchase to store increased milk volumes. For example, a producer may choose to install a second, smaller bulk tank (to reduce capital equipment costs) because the milk hauler could collect all the milk in the larger tank on the existing schedule and collect the additional milk accumulated in the smaller tank less often. Under the proposed rule, milk haulers will also gain increased flexibility in scheduling collections. For example, fewer milk tanker trips could be necessary for a producer who has two bulk tanks, one of which is completely emptied on the existing schedule and the other one which is used to "top up" a tanker for two consecutive days and is then emptied completely into a second tanker every third day. Reducing the number of milk tanker trips in situations like this could reduce damage to roadways and hauling costs for the dairy plant. Dairy producers and milk haulers would also benefit in the situation where the amount of milk in the farm bulk tank exceeds the remaining capacity of a milk tanker. Currently, the excess milk must be dumped. Under the proposed rule, the milk tanker could be filled to its limit, and the remaining milk held over for an additional collection by a truck with appropriate capacity.

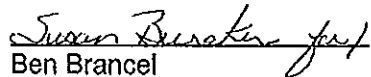
### 6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

The proposed rule would adopt federal PMO regulations related to partial collection of milk from bulk tanks. The federal guidelines in the PMO allow partial collection of milk, but compliance with the PMO is a voluntary effort by state regulatory agencies. Wisconsin's current regulations are more stringent than the PMO and do not allow for partial collection of milk from bulk tanks.

## 7. Anticipated economic impact

This proposed rule change is anticipated to have no negative impact, but rather a positive economic impact for Wisconsin's dairy industry. It will make Wisconsin's regulations regarding partial collection of milk from bulk tanks consistent with practices in other states, including those elsewhere in the Upper Midwest. It will allow dairy plants to manage their milk hauling practices more efficiently and profitably. Although the proposed rule will allow partial collection of bulk milk, it is not anticipated to be a widespread practice, but one tool that a dairy plant may use to manage milk hauling practices. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

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Ben Brancel

Secretary

Department of Agriculture, Trade and Consumer Protection

6-6-13  
Date Submitted